



Postal Registration No. N. E.—771/2006-2008

# The Gazette of Meghalaya

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 91

Shillong, Wednesday, April 8, 2009,

18th Chaitra, 1931 (S. E.)

## PART II-A

GOVERNMENT OF MEGHALAYA

MEGHALAYA LEGISLATIVE ASSEMBLY SECRETARIAT

### ORDER

The 8th April, 2009.

**No.SP.8/MLA/2009/25.**

1. By this order, I shall finally decide the petition. I received a petition against Mr. Paul Lyngdoh, Member of Legislative Assembly from Jaiaw, under Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution of India, seeking, disqualification of Mr. Paul Lyngdoh from the membership from Meghalaya Legislative Assembly. The Petition under Tenth Schedule was received by me on March 13<sup>th</sup>, 2009 from Shri Conrad K. Sangma, M.L.A. and Secretary M.P.A. seeking disqualification of the membership of Mr. Paul Lyngdoh from the Meghalaya Legislative Assembly.
2. The notice was issued to Mr. Paul Lyngdoh on the said complaint on 14<sup>th</sup> March, 2009 and reply was sought by 16<sup>th</sup> March 2009. The reply of Mr. Paul Lyngdoh was received by me on 16<sup>th</sup> March 2009.
3. The summary of allegation made in the petition of Mr. Conrad K. Sangma dated 13<sup>th</sup> March 2009 against Mr. Paul Lyngdoh that he has resigned from the Council of Minister of M.P.A. Government on March 10<sup>th</sup>, 2009 and has also aligned with the Congress Party which is against the stand of H.S.P.D.P with which K.H.N.A.M. got merged. Besides it has also been urged that K.H.N.A.M. is not a recognized party and moreover Mr. Paul Lyngdoh has also not filed any rules and regulations of his party as per the requirement laid down in Rule 3 (2) of the Members of Meghalaya Legislative Assembly (Disqualification on ground of defection) Rules, 1988 and therefore he should be treated as independent M.L.A. and he has also lost his character as independent M.L.A. on account of certain actions taken by him in the form of resigning from the M.P.A, Government and aligning with Congress Party. It has also been stated that Mr. Paul Lyngdoh has acted in manner which is in gross violation of political morality.
4. Mr. Paul Lyngdoh in his reply dated 16<sup>th</sup> March 2009 has raised technical objections that the petition is not in terms of Rules. He has also stated that he requires some more time to reply to the petition and has sought time till 21<sup>st</sup> March 2009. Mr. Paul Lyngdoh has also stated in his reply that there has not been any merger between K.H.N.A.M and H.S.P.D.P. He further maintained that the petition is not maintainable and has also prayed that no interim order should be passed on the petition.
5. A fresh notice was issued to Shri Paul Lyngdoh on 1<sup>st</sup> April 2009 directing Shri Paul Lyngdoh to submit further reply, if any, to the petition of Shri Conrad K. Sangma dated 13<sup>th</sup> March 2009 by or before 6<sup>th</sup> April 2009.

6. Shri Paul Lyngdoh submitted a detailed further reply on 6<sup>th</sup> April 2009. In his reply, Shri Paul Lyngdoh stated that his earlier reply dated 16<sup>th</sup> March 2009 should also be *read* with as part and parcel of the reply filed by him on 6<sup>th</sup> April 2009. Shri Paul Lyngdoh also submitted in his reply that he was entitled to basic minimum period of 7 (seven) days from the date of receipt of the petition. He further stated that he has not been given 7 (seven) days from the date of receipt of such petition. He has on merits submitted that Shri Conrad K. Sangma is not the Secretary of Parliamentary Party of the M.P.A. He has also stated that M.P.A. is not a Parliamentary Party. He has stated that he is President of Khun Hynnewtrep National Awakening Movement (hereinafter to be referred to as "KHNAM") which is a Political Party with its own constitution. It has no alliance with Hill State Peoples Democratic Party (hereinafter to be referred to as "HSPDP"). He has also stated that he was not happy with the performance of MPA Government and it was the decision of Central Executive Council of KHNAM Party to withdraw the support from MPA Government and he was directed by the Central Executive Council to withdraw the support and in pursuance of the direction of the party, he tendered the resignation from Council of Ministers on 10<sup>th</sup> March 2009. He further asserted that he did not violate the mandate of anti defection law. He further asserted that HSPDP and KHNAM have not merged into single entity. He further asserted that both are separate political parties and continually he demanded that the petition be referred to the committee under Rule 7(7) of Meghalaya Anti-defection Rule. He demanded personal hearing and also representation by a legal counsel.

Shri Paul Lyngdoh also made baseless allegation against me that I have publicly made some statement against him. The allegations made in the reply dated 6<sup>th</sup> April 2009 against me are baseless, frivolous and without substance. I have not made any adverse statement against Shri Paul Lyngdoh in respect of the petition pending before me. The allegations have been made by Shri Paul Lyngdoh with the object to prevent me from discharging my constitutional duty of deciding the petition filed under Tenth Schedule. I do not approve such tactics adopted by Shri Paul Lyngdoh.

7. As requested by Shri Paul Lyngdoh I gave him and his counsel a hearing on 7<sup>th</sup> April 2009.
8. Learned counsel for Shri Paul Lyngdoh during the course of hearing reiterated the submissions made in the reply filed by Shri Paul Lyngdoh on 6<sup>th</sup> April 2009.
9. After having heard the counsel of Shri Paul Lyngdoh and after going through the petition filed by Shri Conrad K. Sangma, MLA and replies filed by Shri Paul Lyngdoh on 16<sup>th</sup> March 2009 and on 6<sup>th</sup> April 2009, I am of the view that Shri Paul Lyngdoh has violated the anti defection law and has incurred disqualification under Para 2(2) of Tenth Schedule of the Constitution.
10. Let me deal with the contentions raised by Shri Paul Lyngdoh in his replies and in the arguments submitted on 7<sup>th</sup> April 2009. Following issues have been raised by Shri Paul Lyngdoh in his defence to the petition of Shri Conrad K. Sangma:
  - (a) He has not been provided with a period of 7 (seven) days to file the reply to the petition of Shri Conrad K. Sangma as provided in Rule ;
  - (b) The petition filed by Shri Conrad K. Sangma is required to be submitted to Committee under Rule 7(7) of Defection Rules;
  - (c) Shri Paul Lyngdoh has also demanded compliance of one of the principles of natural justice by demanding cross examination of the petitioner and his witnesses and has asserted that only after evidence of the petitioner and his witnesses, he will file his evidence.
  - (d) The KHNAM Party is an independent party and therefore he has not incurred disqualification under Rule 2(2) of Tenth Schedule of the Constitution;
11. I have examined the objections of Shri Paul Lyngdoh thoroughly. The objections of Shri Paul Lyngdoh are superficial in nature. Let me deal with the objections of Shri Paul Lyngdoh one by one.
12. The first objection of Shri Paul Lyngdoh is that he has not been provided with 7 (seven) days time to file the reply. The submission of Shri Paul Lyngdoh in this regard is without merit. The notice was issued to him on 14<sup>th</sup> March 2009. In his reply filed on 16<sup>th</sup> March 2009, Shri Paul Lyngdoh sought time till 21<sup>st</sup> March 2009 to file the reply. Shri Paul Lyngdoh did not file the comprehensive reply by 21<sup>st</sup> March 2009. It is

relevant to state here that by interim order dated 16<sup>th</sup> March 2009, I have not denied him right to file the reply as sought by him. Under this circumstances, a fresh notice was issued to him on 01<sup>st</sup> April, 2009 seeking his further reply to the petition, if any. Therefore, Shri Paul Lyngdoh has been provided with more than 7 (seven) days time to file the reply. Not only that as requested by Shri Paul Lyngdoh, he and his counsel were given personal hearing on 7<sup>th</sup> April 2009. Therefore, the contentions that he has not been given sufficient opportunity to answer the petition is bereft of merit and is liable to be rejected.

13. The second objection of Shri Paul Lyngdoh is equally without merit. The constitution and anti-defection rule clearly confer the exclusive power on Speaker to decide the petition under Tenth Schedule. The request for referring the petition to the Committee is clearly not made out in the instant case in as much as there is hardly any special circumstances warranting reference of the petition to the Committee. Nor has the counsel nor Shri Paul Lyngdoh have advanced any argument on the issue of special circumstances even during the argument on 7<sup>th</sup> April 2009. Rule 4(4) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 empowers the Speaker to either proceed to determine the question himself or he may refer the same to the committee. For ready reference Rule 4(4) of the disqualification rule is cited hereinunder *"After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him."*

I do not find merit in the submission of the counsel of Shri Paul Lyngdoh for the reason that the provisions contained in the Tenth Schedule of Constitution of India as well as Rule 4(4) provide that a Speaker can only decide the petition. It is not mandatory for the Speaker to refer to all petitions under Tenth Schedule of the Constitution of India to the committee. The discretion is vested in the Speaker. The counsel of Shri Paul Lyngdoh did not point out special circumstances warranting the reference of the petition to the committee. I do not find any ground for referring the matter to the committee. Hence, this objection stands rejected.

14. So far as the third objection is concerned, the same is also without merit and hence rejected. In the facts and circumstances of the case, I do not find any justification to have examination and cross-examination of the petitioner / Shri Paul Lyngdoh and their respective witnesses. There is no need to carry out the said exercise for deciding the instant petition. In my opinion the said exercise would be a futile effort and has no relevance for deciding the issues raised in the petition. The petition can be disposed of without undertaking the above said exercise.
15. Dealing with the argument that examination of the petitioner and cross examination is a must to comply with the principles of natural justice, I have to say that the learned Counsel of Shri Paul Lyngdoh has cast the principles of natural justice into a rigid mould and legal straightjacket which is not permissible in law.
16. The issue of examination of the petitioner or any other witness would arise only when the petition cannot be decided one way or the other on the basis of submissions made by the parties and facts admitted by the parties.
17. In the facts and circumstances, I do not feel the necessity of having examination or cross examination of the petitioner / Shri Paul Lyngdoh. I am of the considered opinion that in the instant case after going through the petition and reply submitted by Shri Paul Lyngdoh and also having regard to over all view of the matter, there is hardly any scope for examination and cross-examination of witnesses to prove a fact. I do not find any object or purpose of examination or cross-examination of the witnesses. I am fortified in my above opinion on the basis of observations made by Supreme Court in the case of Jagjit Singh v. State of Haryana (2006) 11 SCC 1. In paragraph 14 of the said judgement, the Hon'ble Supreme Court has held the proceeding under Tenth Schedule are not comparable to either a trial in a Court of Law or Departmental Proceedings for disciplinary action against an employee. Hence, there is no scope of examination or cross-examination of witnesses in view of the facts admitted by the parties.
18. The last objection of Shri Paul Lyngdoh is that the KHNAM is an independent political party. In reply, he said that his party has its own Constitution. It is relevant to mention here that for the first time, Shri Paul Lyngdoh

has annexed a copy of the Constitution of his party. It is also relevant to state here that Shri Paul Lyngdoh has simply submitted in his reply that KHNAM is a political party. He has also not produced any material to show that the KHNAM is a recognized political party by Election Commission. He has not produced any document showing that KHNAM is a registered party with the Election Commission of India. He has also not produced any order passed by Election Commission of India reserving any symbol for his political party under Election Symbols (Reservation and Allotment) Order, 1968. It is also not out of place to state here that Rule 3 (2) of Defection Rules provide that where Legislature party consist of only one member such members shall furnish a copy of Rules and Regulations, if any, to the Speaker as soon as may be after the first sitting. Admittedly Shri Paul Lyngdoh has not furnished a copy of Rule and Regulation of his party.

19. In the light of facts and law point stated in the previous paragraph, the question which arises for my consideration in this petition is as to whether KHNAM can be treated as a 'Political Party' as referred in the Tenth Schedule of the Constitution. In my opinion KHNAM cannot be said to be a political party in as much as no symbol has been allotted to it under the Election Symbols (Reservation and Allotment) Order, 1968. The similar issue arose for the consideration of Hon'ble Speaker of Assam in the case of Santi Ranjan Dasgupta and Others (1998), wherein it was observed by the Hon'ble Speaker that as stipulated in the Election Symbols (Reservation and Allotment) Order, 1968, a political party for the purpose of defection is the one, which is recognized by the Election Commission of India and therefore recognized for the purpose of election. I concur with the view expressed by the Hon'ble Speaker in the above matter and I hold that KHNAM is not a political party as referred in the Tenth Schedule of the Constitution.
20. Having held that KHNAM is not a recognized political party, I have no option but to hold Shri Paul Lyngdoh as an Independent member elected otherwise than as a candidate of a political party. The Para 2(2) of Tenth Schedule of the Constitution shall apply to Shri Paul Lyngdoh.
21. After having held that Shri Paul Lyngdoh is an independent candidate, let me analyse the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule. The Constitution Bench of the Hon'ble Supreme Court in the judgement of Kihoto Hollohan v. Zachillhu 1992 Supp(2) SCC 651 has aptly dealt with the menace of defection in paragraph 49 of its judgement and the same is quoted hereinunder.

*"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct - whose awkward erosion and grotesque manifestations have been the bane of the times - above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end..." are constitutional [Katzenbach v. Morgan, 384 US 641 : 16 L Ed 2d 828 (1966)]."*

The Hon'ble Supreme Court has rightly observed in the above said celebrated judgement that unprincipled defection is a political and social evil. The State of Meghalaya is victim of unprincipled defection. The government of the day has been victim of unprincipled defection and it is causing almost collapse of the democratic system in the State of Meghalaya. People of Meghalaya have been fed-up with the approach of some of the MLAs who have been committing defection for money and other extraneous considerations.

The petitioner has sought the disqualification of Shri Paul Lyngdoh, MLA on the ground that he has violated para 2(2) of Tenth Schedule read with Article 191(2) of the Constitution of India. It would be useful to cite the provisions contained in the Constitution and they are as under:

" 191-Disqualifications for membership. - (1) ...



[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a state if he is so disqualified under the Tenth Schedule.]

**“TENTH SCHEDULE**

(2) Disqualification on ground of defection

(1) .....

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.”

A perusal of the Constitutional provision show that an independent M.L.A. can be disqualified if he joins any political party after such election.

The legal issue which arises for my consideration as to how the word “Join” mentioned in Tenth Schedule has to be interpreted. Whether a formal joining of a political party by independent M.L.A. would disqualify him under para 2(2) of Tenth Schedule or even in absence of formal joining of the political party but on the basis of conduct a conclusion can be drawn that independent M.L.A. has joined a political party for all practical purposes and intent and would that be sufficient to hold that he has incurred disqualification under para 2(2) of Tenth Schedule.

The Hon'ble Supreme Court had occasion to interpret the word “Join” in the judgement of Jagjit Singh vs. State of Haryana and others (2006) 11 SCC 1. In the said case, disqualification of independent M.L.A. was sought on the ground that after the election, the independent M.L.A. has joined a political party. The petitioner therein in his petition for disqualification relied upon the interview given by the independent M.L.A. stating that he had joined the political party. The said independent M.L.A. denied that he joined the political party, it was also stated that newspapers have not reported correct facts, it was also stated by him that he has not filed the requisite form and paid the subscription to become the members of the political party. It was also stated by him that he has simply decided to withdraw the support from the ruling party by joining hands with the Congress. The Hon'ble Speaker of the Haryana State Assembly disqualified him on the ground contained in Para 2(2) of Tenth Schedule. The judgement of the Hon'ble Speaker came under challenge before the Hon'ble Supreme Court in the above said case. The Hon'ble Supreme Court dismissed the petition of the independent M.L.A. and laid down the law contained in para 51 and 52 of the said judgement and the same is cited herein for ready reference.

*“5.1, As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a member, without a member formally joining a political party in as much as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent member has joined a political party. These are two extreme views on the issue.*

*52. We are of the view that to determine whether an independent member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non-fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined, for all intent and purposes, a political party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of the material on record,”*

Thus the test for deciding as to whether independent M.L.A. has incurred disqualification under para 2(2) of Tenth Schedule is to examine as to whether the Independent M.L.A. has given up his independent character on which he was elected by the electorate.

22. Now therefore the question is whether by inference can it be said from the conduct of Shri Paul Lyngdoh that he has informally joined Congress Party and lost his independent character. There is no dispute with regard to the fact that after resigning from the MPA Government on 10<sup>th</sup> March 2009 he extended the whole hearted support to the Congress party. It has come in the newspaper reports that he has attended all the crucial meetings of the Congress party. It has also come in the newspaper that he has been one of the signatories of the petition filed by Dr. D.D. Lapang, the leader of Congress Party to the Governor. He has also put signature against the motion on 17<sup>th</sup> March 2009 in the division list of the Assembly even though he was barred to do so on account of order of suspension. He has openly expressed his willingness to work for the Congress party. From the conduct of Shri Paul Lyngdoh it is apparent that Shri Paul Lyngdoh has informally joined the Congress party for all intent and purpose. It is also apparent that he has lost his independent character by his conduct and various acts and omission. Therefore, I have no hesitation in holding that Shri Paul Lyngdoh has incurred disqualification under Para 2(2) of Tenth Schedule of the Constitution of India.
23. On the basis of facts and circumstances of the case and discussion made herein above, I have no hesitation in holding that Shri Paul Lyngdoh has incurred disqualification under paragraph 2 (2) of Tenth Schedule of the Constitution of India. Over all facts of the case clearly establish that he has lost his independent character and therefore, in my opinion, he has incurred disqualification under paragraph 2 (2) of Tenth Schedule of the Constitution.

In view of the discussion made herein above and in exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the rules made thereunder, I, Bindo M. Lanong, hereby declare that Shri Paul Lyngdoh, member of Meghalaya Legislative Assembly has incurred disqualification for being a member of the Meghalaya Legislative Assembly in terms of Para 2(2) of the said Schedule. Accordingly, Shri Paul Lyngdoh, MLA has ceased to be a member of the Meghalaya Legislative Assembly with immediate effect and his seat shall thereupon fall vacant.

I direct this Order to be published in the Official Gazette and the copies of the Order be forwarded to the Secretary to the Election Commission of India and the Government of Meghalaya.

**BINDO M. LANONG,**  
Speaker,  
Meghalaya Legislative Assembly.

**W. M. RYMBAI,**  
Secretary,  
Meghalaya Legislative Assembly.

**ORDER**

The 8<sup>th</sup> April, 2009.

**No.SP.8/MLA/2009/25.**

1. By this order, I shall finally decide the petition filed under Tenth Schedule of the Constitution against Mr. Sanbor Shullai, Member of Legislative Assembly from Laban Constituency under paragraph 2 (1) (a) of Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution of India who has been elected on the Party Ticket of Nationalist Congress Party. The Petition under Tenth Schedule was received by me on March 14, 2009 seeking disqualification from the membership of Mr. Sanbor Shullai from the Meghalaya Legislative Assembly. The petition was lodged by Mr. John Manner Marak, M.L.A. of Nationalist Congress Party (hereinafter referred to as "NCP") and also Secretary of N.C.P.
2. The notice was issued to Mr. Sanbor Shullai on the said complaint on 15<sup>th</sup> March, 2009 and reply was sought by 4:30 PM of 16<sup>th</sup> March 2009. No reply was filed by Mr. Sanbor Shullai, MLA. I had received an application from Mr. Sanbor Shullai, M.L.A. stating that he has gone to Guwahati on 13<sup>th</sup> March 2009 for some urgent personal work and on 14<sup>th</sup> March 2009 he has developed abdominal pain and doctor has advised him to undergo some medical examination and remain in the supervision of the doctor. And it is not possible for him to attend the House and do the official work of Deputy Speaker.
3. A detailed interim order was passed by me on 16<sup>th</sup> March 2009 whereby on the basis of material on record, the membership and voting right of Shri Sanbor Shullai of Meghalaya Legislative Assembly was suspended pending final hearing. However, Shri Sanbor Shullai did not reply to the petition.
4. A fresh notice was issued to Shri Sanbor Shullai on 1<sup>st</sup> April, 2009 seeking reply, if any, to the petition filed by Shri John Manner Marak and time was given to file the reply by or before 6<sup>th</sup> April 2009.
5. Mr. Sanbor Shullai filed a detailed reply on 6<sup>th</sup> April 2009 pursuance to the notice issued to him on 1<sup>st</sup> April 2009.  
In his reply, Mr. Sanbor Shullai said that he is entitled to basic minimum period of 7 (seven) days. Mr. Sanbor Shullai also made baseless allegation against me that I have publicly made some statements against him. The allegations made in the reply dated 6<sup>th</sup> April 2009 against me are baseless, frivolous and without substance. I have not made any adverse statement against Mr. Sanbor Shullai in respect of the petition pending before me. The allegations have been made by Mr. Sanbor Shullai with the object to prevent me from discharging my constitution duty of deciding the petition filed under Tenth Schedule. I do not approve such tactics adopted by Mr. Sanbor Shullai.
6. In his reply, Mr. Sanbor Shullai has also claimed exemption under Para 5 of Tenth Schedule of the Constitution. He has also denied the allegation of voluntarily giving up the membership of the party. He has rather made allegation against his own party leaders. He has denied that he has acted contrary to the interest of the party and he has done nothing to show that he has voluntarily left the party. He has also demanded a reference of the petition to the Committee and demanded personal hearing and sought representation through advocate.
7. As requested by Mr. Sanbor Shullai, he was given personal hearing on 7<sup>th</sup> April 2009 and he was also permitted to be represented by his advocate. His counsel submitted his argument on 7<sup>th</sup> April 2009. In the argument submitted before me on 7<sup>th</sup> April 2009, Counsel of Mr. Sanbor Shullai reiterated the submissions made in the reply filed by Mr. Sanbor Shullai on 6<sup>th</sup> April 2009.
8. After having heard the counsel of Mr. Sanbor Shullai and after going through the petition filed by Shri John Manner Marak, MLA and reply filed by Mr. Sanbor Shullai on 6<sup>th</sup> April 2009, I am of the view that Mr. Sanbor Shullai has violated the anti defection law and has incurred disqualification under Para 2(1) (a) of Tenth Schedule of the Constitution.
9. Let me first deal with the legal provisions concerning anti defection law. The object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or

other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule.

10. The Constitution Bench of the Hon'ble Supreme Court in the judgement of *Kihoto Hollohan vs. Zachillhu* 1992 Supp(2) SCC 651 has aptly dealt with the menace of defection in paragraph 49 of its judgement and the same is quoted hereinunder.

"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct - whose awkward erosion and grotesque manifestations have been the bane of the times - above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end..." are constitutional [*Katzenbach v. Morgan*, 384 US 641 : 16 L Ed 2d 828 (1966)]."

The Hon'ble Supreme Court has rightly observed in the above said celebrated judgement that unprincipled defection is a political and social evil. The state of Meghalaya is the victim of unprincipled defection. The government of the day has been victim of unprincipled defection and it is causing almost collapse of the democratic system in the state of Meghalaya. People of Meghalaya have been fed-up with the approach of some of the MLAs who have been committing defection for money and other extraneous considerations.

11. The petitioner has sought the disqualification of Mr. Sanbor Shullai, MLA on the ground of 2 (1) (a) of Tenth Schedule read with Article 191(2) of the Constitution of India. Before adverting to the allegation made in the petition, it would be useful to cite the provisions contained in the Constitution and they are as under: "191-Disqualifications for membership. - (1) ... [(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a state if he is so disqualified under the Tenth Schedule.]

#### "TENTH SCHEDULE

(2) Disqualification on ground of defection

(1) .....

(a) If he has voluntarily given up his membership of such political party;

A perusal of the above Constitutional provisions clearly show that a member of assembly can be disqualified if he has voluntarily given up his membership of such political party.

The legal issue which arises for my consideration as to the circumstances on the basis of which it can be presumed or inferred that the member has voluntarily given up his membership of such political party.

The Hon'ble Supreme Court in various authority pronouncements including in the case of *Kihoto Hollohan vs. Zachillhu* and others 1992 Supp (2) SSC 651 and also in the case of *G. Viswanathan vs. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras* and Another 1996 (2) SSC 353 has dealt with the issue of 'Voluntarily given up his membership of such political party'. The observations of the Hon'ble Supreme Court in the above judgment is cited hereinunder for ready reference.



"8. The legislative background for enacting the law affords a key for an understanding of the relevant provisions. What impelled Parliament to insert the Tenth Schedule can be seen from the Statement of Objects and Reasons appended to the Bill which ultimately resulted in the Constitution (Fifty-second Amendment) Act, 1985, quoted in the decision, *Kihoto Hollohan v. Zachillhu* [1992 Supp (2) SCC 651]. It is to the following effect : (SCCp. 668, para 4)

"The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."

When the constitutionality of the above provisions was challenged, this Court, after referring to paras 2, 3 and 4 of the Tenth Schedule of the Constitution stated in *Kihoto Hollohan* [1992 Supp (2) SCC 651], as under : (SCCp. 671, para 13)

"These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election."

The Hon'ble Supreme Court in the case of *Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and others* (2004) 8 SCC 747 has again dealt with the issue of voluntarily giving up the membership of the political party. In the said judgement, the Hon'ble Supreme Court has held that the act of voluntarily giving up the membership of political party may be either express or implied. Paragraphs 9 & 10 of the said judgement of the Hon'ble Supreme Court clearly brings out the principles on the act of voluntarily giving up the membership of the political party and the same are cited hereinunder for ready reference:

9. The question as to when a member of a House belonging to a political party can be said to have given up his membership of such political party has been considered in two later decisions of this Court. In *Ravi S. Naik v. Union of India* 1994 (Supp.) 2 SCC 641 two M.L.A.s, Bandekar and Chopdekar, had been elected on the ticket of MGP party, but they accompanied the leader of Congress (I) Legislative Party when he met the Governor to show that he had the support of 20 MLAs. On this conduct alone, the Speaker held that they had given up membership of the MGP party and disqualified them for being a member of the House. The decision of the Speaker under which he held that the two MLAs shall be disqualified for being a member of the House under paragraph 2(1)(a) of the Schedule was upheld by this Court. The scope and amplitude of paragraph 2(1)(a) was explained as under in para 11 of the reports :

"11. .... The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs".

10. In *G. Viswanathan & Ors. v. Hon'ble Speaker Tamil Nadu Legislative Assembly & Ors.* 1996 (2) SCC 353 the appellants had been elected as members of the Legislative Assembly in 1991 as candidates of AIDMK party but they were expelled from the said party on 8th January, 1994. The Speaker declared

them as unattached members of the Assembly on 16th March, 1994. Sometime thereafter, an MLA informed the Speaker that the appellants had joined MDMK party and, therefore, they should be disqualified from membership of the Assembly. After calling for their explanation the Speaker held that they had incurred the disqualification under paragraph 2(1)(a) of the Tenth Schedule and had ceased to be members of the Assembly. The main contention raised on behalf of the appellants was that paragraph 2(1)(a) of the Tenth Schedule comes into play only to disqualify a member who voluntarily gives up his membership of that political party that had set him up as a candidate, and not when he is expelled from the party and declared "unattached" i.e. not belonging to any political party. It was further contended that para 2(a) will apply only when a member himself of his own volition gives up his membership of the party. Any member thrown out will cease to be a member of the party that had set him up as a candidate and if he joins another party thereafter, it will not be a case of "voluntary giving up his membership of the political party" that had set him up as a candidate for the election. It was held that if the contention urged on behalf of the appellants is accepted, it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief namely, breach of faith of the electorate. The principle on which such a view was taken was explained as under in para 11 of the reports :

"11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person "voluntarily give up" his membership of such political party, as provided in para 2(1)(a) of Tenth Schedule of the constitution. **The act of voluntarily giving up the membership of the political party may be either express or implied.** When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member." (Emphasis added)

Therefore the test as to whether M.L.A. of a party has voluntarily given up the membership of the political party on whose ticket and election symbol he was elected is not only the formal resignation of the M.L.A. from political party but can also be inferred from the conduct of the said M.L.A. In this regard, it is worthwhile to state that the Hon'ble Supreme Court upheld the decision of the Speaker to disqualify the 2 (two) M.L.As of M.G.P. party who accompanied the leader of Congress(I) Legislative Party when he met the Governor to show that he had the support of 20 (twenty) M.L.As. Therefore on the basis of the said conduct of the 2 (two) M.L.As. of M.G.P. Party, it was inferred that they had voluntarily given up the membership of political party.

12. After having spelt out the legal provision, let me deal with the contentions raised by Mr. Sanbor Shullai in his reply and in the arguments submitted on 7<sup>th</sup> April 2009. Following issues have been raised by Mr. Sanbor Shullai in his defence to the petition of Shri John Manner Marak:
  - (a) He has not been provided with a period of 7 (seven) days to file the reply to the petition of Shri John Manner Marak as provided in Rule ;
  - (b) The petition filed by Shri John Manner Marak is required to be submitted to Committee under Rule 7(7) of Defection Rules;
  - (c) Mr. Sanbor Shullai has also demanded compliance of principles of natural justice by demanding cross examination of the petitioner and his witnesses and has asserted that only after evidence of the petitioner and his witnesses he will file his evidence;
  - (d) By virtue of being Deputy Speaker, he is exempted from Anti Defection Law by virtue of provision contained in Para 5 of Tenth Schedule of the Constitution;
  - (e) He has not done anything to show that he has voluntarily given up the membership of NCP.

13. I have examined the objections of Mr. Sanbor Shullai thoroughly. The objections of Mr. Sanbor Shullai are superficial in nature and are without merit. Let me deal with the objections of Mr. Sanbor Shullai one by one.
14. The first objection of Mr. Sanbor Shullai is that he has not been provided with 7 (seven) days time to file the reply. The submission of Mr. Sanbor Shullai in this regard is without merit. The notice was issued to him on 15<sup>th</sup> March 2009. Mr. Sanbor Shullai did not initially file the reply at all. It is relevant to state here that by interim order dated 16<sup>th</sup> March, 2009, I have not denied him right to file the reply. Under this circumstances, a fresh notice was issued to him on 01<sup>st</sup> April, 2009 seeking his further reply to the petition, if any. Therefore, Mr. Sanbor Shullai has been provided with more than 7 (seven) days time to file the reply. Not only that as requested by Mr. Sanbor Shullai, he and his counsel were given personal hearing on 7<sup>th</sup> April, 2009. Therefore, the contentions that he has not been given sufficient opportunity to answer the petition is bereft of merit and is rejected.
15. The second objection of Mr. Sanbor Shullai is equally without merit. The constitution and anti-defection rule clearly confer exclusive power on Speaker to decide the petition under Tenth Schedule. The request for referring the petition to the Committee is clearly not made out in the instant case in as much as there is hardly any special circumstances warranting reference of the petition to the Committee. Nor has the counsel nor Mr. Sanbor Shullai have advanced any argument on the issue of special circumstances even during the argument on 7<sup>th</sup> April, 2009. Rule 4(4) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 empowers the Speaker to either proceed to determine the question himself or he may refer the same to the committee. For ready reference Rule 4(4) of the disqualification rule is cited hereinunder

“After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.”

I do not find merit in the submission of the counsel of Mr. Sanbor Shullai for the reason that the provisions contained in the Tenth Schedule of Constitution of India as well as Rule 4(4) provide that a Speaker can only decide the petition. It is not mandatory for the Speaker to refer to all petitions under Tenth Schedule of the Constitution of India to the Committee. The discretion is vested in the speaker. The counsel of Mr. Sanbor Shullai did not point out special circumstances warranting the reference of the petition to the committee. I do not find any ground for referring the matter to the committee. Hence, this objection stands rejected.

16. So far as the third objection is concerned, the same is also without merit and hence rejected. In the facts and circumstances of the case, I do not find any justification to have examination and cross-examination of the petitioner /Mr. Sanbor Shullai and their respective witnesses. There is no need to carry out the said exercise for deciding the instant petition. In my opinion, the said exercise would be a futile effort and has no relevance for deciding the issues raised in the petition. The petition can be disposed of without undertaking the above said exercise.
17. Dealing with the argument that examination of the petitioner and cross examination is a must to comply with the principles of natural justice, I have to say that the learned Counsel of Mr. Sanbor Shullai has cast the principles of natural justice into a rigid mould and legal straightjacket which is not permissible in law.
18. The issue of examination of the petitioner or any other witness would arise only when the petition cannot be decided one way or the other on the basis of submissions made by the parties and facts admitted by the parties.
19. In the facts and circumstances, I do not feel the necessity of having examination or cross examination of the petitioner/ Mr. Sanbor Shullai. I am of the considered opinion that in the instant case after going

through the petition and reply submitted by Mr. Sanbor Shullai and also having regard to over all view of the matter, there is hardly any scope for examination and cross-examination of witnesses to prove a fact. I do not find any object or purpose of examination or cross-examination of the witnesses. I am fortified in my above opinion on the basis of observations made by Supreme Court in the case of Jagjit Singh v. State of Haryana (2006) 11 SCC 1. In paragraph 14 of the said judgement, the Hon'ble Supreme Court has held the proceeding under Tenth Schedule are not comparable to either a trial in a Court of Law or Departmental Proceedings for disciplinary action against an employee. Hence, there is no scope of examination or cross-examination of witnesses in view of the facts admitted by the parties.

20. So far as fourth objection of Mr. Sanbor Shullai is concerned, the same is also without merit. It appears that Mr. Sanbor Shullai has wrongly construed the provision contained in Para 5 of Tenth Schedule of the Constitution. Para 5 of Tenth Schedule of the Constitution provides for exemption from provisions of Tenth Schedule of the Constitution only in the event of election of Deputy Speaker giving up the membership of the political party to which he belonged immediately before such election. It is not the case of Mr. Sanbor Shullai that he has given up the membership of NCP immediately before his election as Deputy Speaker. Mr. Sanbor Shullai continues to maintain that he is still the member of NCP party. In his reply dated 6<sup>th</sup> April 2009, there is not even whisper that he has left the NCP immediately before his election as Deputy Speaker. Having regard to the admitted position of the parties, I do not find merit in the submission that Mr. Sanbor Shullai is enjoying the exemption as provided in Para 5 of Tenth Schedule of the Constitution. For ready reference Para 5 of Tenth Schedule is quoted hereinunder :

“5. Exemption - Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule, -

- (a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or
- (b) If he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

A bare perusal of Para 5 (a) abundantly makes it clear that the provisions of Tenth Schedule will not apply if the Deputy Speaker has not voluntarily given up his membership of the NCP before such election. Mr. Sanbor Shullai has not given up the membership of the NCP before the election and therefore, no protection is available to him under Para 5 (a) of Tenth Schedule of the Constitution. Hence this objection of Mr. Sanbor Shullai is without merit and is rejected.

21. Lastly, Mr. Sanbor Shullai has denied the allegation of voluntarily giving up the membership of NCP. He has denied all the allegations made in the petition of Shri John Manner Marak. He has denied that he has not indulged in anti party activity amounting to voluntarily giving up the membership of party. The denial of Mr. Sanbor Shullai to the allegations are not worthy of any credence. The conduct of Mr. Sanbor Shullai is well known. Even the allegations made in the petition of Mr. John Manner Marak are ignored, there are enough evidence on record showing that Mr. Sanbor Shullai has voluntarily given up the membership of NCP. Even the incident which took place on 17<sup>th</sup> March 2009 at the time of vote of confidence in the Assembly clearly showed that Mr. Sanbor Shullai has voluntarily given up the membership of the NCP. Even after suspension of Mr. Sanbor Shullai from voting right by my order dated 16<sup>th</sup> March, 2009, Mr. Sanbor Shullai came late to the Assembly on 17<sup>th</sup> March 2009 after voting was over and counting was also over. It was clear that MPA Government has proved its majority on the floor of the House. He wanted to cast his vote against the motion which is done by him for defeating the motion. When he was not permitted, he tried to disrupt the proceeding. Furthermore, his conduct on the 17<sup>th</sup> March, 2009 also

clearly indicated that he has voluntarily given up the membership of NCP. In Assembly on 17<sup>th</sup> March, 2009, he sat with Dr. Mukul Sangma, a Congress leader and he sat in Opposition benches and not with the Treasury benches. The video recording of the proceeding on the said day tell its own tale. The other conduct like coming to Assembly on 2<sup>nd</sup> April, 2009 along with about 7 (seven) Congress legislators and created drama alongwith the Congress MLAs by ill-treating the Assembly Secretary which have been widely reported in the newspapers clearly prove the charges of Shri John Manner Marak that Mr. Sanbor Shullai has been hobnobbing with the Congress party. Furthermore, the petition filed by him before me against the top most leader of NCP, Mr. P.A. Sangma on 6<sup>th</sup> April, 2009 under Tenth Schedule stating that Mr. P.A. Sangma has joined Congress party further indicates that he is indulging in anti party activity which clearly amounts to voluntarily giving up the membership of his party. The above said circumstances ex-facie show that Mr. Sanbor Shullai has voluntarily given up the membership of NCP and has incurred disqualification under Para 2(1) (a) of Tenth Schedule. I do find some substance in the allegations of the petitioner as Mr. Sanbor Shullai has been campaigning against the government programme and policies of M.P.A. government for sometime. Moreover, Shillong Times in its edition dated 1<sup>st</sup> April, 2009 has reported the news that Dr. D.D. Lapang, leader of Congress Legislature Party faxed a list of 31 (thirty one) legislators from New Delhi to the Raj Bhawan claiming to have support of four out of five suspended MLAs. The name of Mr. Sanbor Shullai also figures as one of the persons who is supporting the move of Congress party to form the government. It has not been refuted by Mr. Sanbor Shullai in any of his clarification to either of the newspaper. Therefore, it clearly shows that Mr. Sanbor Shullai is supporting the Congress govt. and that amounts to voluntarily giving up the membership of NCP.

22. On the basis of facts and circumstances of the case and discussion made herein above, I have no hesitation in holding that Mr. Sanbor Shullai has incurred disqualification under paragraph 2 (1) (a) of Tenth Schedule of the Constitution of India. Over all facts of the case clearly establishes that he has voluntarily given up the membership of his party and therefore, in my opinion, he has incurred disqualification under paragraph 2 (1) (a) of Tenth Schedule of the Constitution.

In view of the discussion made herein above and in exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the rules made thereunder, I, Bindo M. Lanong, hereby declare that Mr. Sanbor Shullai, member of Meghalaya Legislative Assembly has incurred disqualification for being a member of the Meghalaya Legislative Assembly in terms of Para 2(1)(a) of the said Schedule. Accordingly, Mr. Sanbor Shullai, MLA has ceased to be a member of the Meghalaya Legislative Assembly with immediate effect and his seat shall thereupon fall vacant.

I direct this Order to be published in the Official Gazette and the copies of the Order be forwarded to the Secretary to the Election Commission of India and the Government of Meghalaya.

**BINDO M. LANONG,**  
Speaker,  
Meghalaya Legislative Assembly.

**W. M. RYMBAI,**  
Secretary,  
Meghalaya Legislative Assembly.



**ORDER**

The 8th April, 2009.

**No.SP.8/MLA/2009/25.**

1. By this order, I shall finally decide the petition filed by Ms. M. Ampareen Lyngdoh, MLA in her capacity as Parliamentary Secretary to United Democratic Party (hereinafter referred to as "U.D.P.") on 10th March, 2009 under the Tenth Schedule of the Constitution seeking disqualification of Shri Ismail R. Marak, MLA.

2. Before dealing with the issues raised in the petition, let me briefly narrate the object of anti defection law. Fifty Second Amendment of the Constitution of India saw the emergence of a new horizon in the Indian Democratic System when the law on prevention of defection came into force in the form of Tenth Schedule of the Constitution.

The basic objective of the legislation is to close the abominable chapter of horse trading among the elected representatives and curb the menace practised by vested-interest politicians for their self gain. After the introduction of Tenth Schedule of the Constitution, whoever transgresses the provisions of the law has to face the legal consequences. Thereafter, people of India have witnessed the many suspension and disqualifications of their erring elected representative in Parliament and in many state legislative assemblies. Thus, effectively containing and streamlining the degraded political immorality to a great extent.

Woefully, despite this law being in force, elected government are being toppled only on simple and immaterial political events through the lee-ways that selfish leader craftily manage to enter. The fate of the government and the fate of people cannot be allowed to be recklessly hijacked and derailed in this fashion by a coterie of those who have motivated and selfish interest. This is the basic idea in the minds of leaders who brought out the noble law into existence.

3. In brief, the facts stated in the petition of Ms. M. Ampareen Lyngdoh, MLA are as under Ms. M. Ampareen Lyngdoh, MLA in her capacity as Parliamentary Secretary to U.D.P. in her petition dated 10th March, 2009 filed on behalf of U.D.P. has stated that Shri Ismail R. Marak became the associate member of U.D.P. on 16th October, 2008 and thereafter Shri Ismail R. Marak has resigned from the U.D.P. on 9th March, 2009 without any valid reason. It was also stated that Shri Ismail. R. Marak also held the office of Parliamentary Secretary in the Govt. of Meghalaya formed by Meghalaya Progressive Alliance which was relinquished by him on 9th March, 2009 in the presence of one of the ministers of Govt. of Assam belonging to Congress Party namely Shri Hemanta Biswas Sarma. In support of her petition, a copy of the newspaper named Shillong Times dated 10th March, 2009 was also enclosed with the petition.

Along with the petition, Ms. M. Ampareen Lyngdoh in her capacity as Parliamentary Secretary to United Democratic Party annexed a copy of the application of Shri Ismail R. Marak dated 16th October, 2008. In the application dated 16th October, 2008 which was addressed by Shri Ismail R. Marak to the President U.D.P. Meghalaya and the then Chief Minister Meghalaya, Shillong, stating that he has decided to become an associate member of the U.D.P. while at the same time retaining himself as Independent Member. Ms. M. Ampareen Lyngdoh in her capacity as Parliamentary Secretary to United Democratic Party has also annexed a copy of the application dated 16th October, 2008 of Shri Ismail R. Marak to me stating that he has decided to become an associate member of the U.D.P. while retaining his status as Independent Member. Ms. M. Ampareen Lyngdoh in her capacity as Parliamentary Secretary to United Democratic Party has also annexed her letter to Shri Ismail R. Marak dated 16th October, 2008. In the said letter, Ms. M. Ampareen Lyngdoh has informed Shri Ismail R. Marak that the party gladly welcome him on his becoming the associate member of U.D.P. It was further informed by Ms.M. Ampareen Lyngdoh to Shri Ismail R. Marak in the said letter that he will soon be accommodated with the assignment as Parliamentary Secretary to the Government of Meghalaya. A press release dated 16th October, 2008 issued by U.D.P. informing the press that Shri Ismail R. Marak had joined U.D.P. as associate member with effect from 16th October, 2008 is also attached to the petition.

4. A notice was issued to Shri Ismail R. Marak on 12th March, 2009 on the petition of Ms. M. Ampareen Lyngdoh. The said notice was duly received by Shri Ismail R. Marak on 12th March, 2009.

5. Shri Ismail R. Marak filed reply to the said notice on 14th March, 2009. In the reply, Mr. Ismail R. Marak has sought time upto 19th March, 2009 to submit his reply in terms of Rule 7(3) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988. Shri Ismail R. Marak also stated in his reply that he has not received the letter of Secretary U.D.P. dated 16th October, 2008 and therefore he is not in position to reply the same. Shri Ismail R. Marak raised certain other technical objections like use of word 'complaint' instead of word 'petition' as mentioned in Tenth Schedule, the complaint has not been verified as per Code of Civil Procedure 1908. Shri Ismail R. Marak has also stated in his reply that he is bed ridden on account of viral fever and therefore he requires time upto 19th March, 2009. A copy of the Medical Certificate was also attached.

6. A detailed interim order was passed by me on 16th March, 2009 whereby on the basis of material on record, the membership and voting right of Shri Ismail R. Marak was suspended pending final hearing. However, Shri Ismail R. Marak did not submit further reply till 19th March, 2009.

7. A fresh notice was issued to Shri Ismail R. Marak on 28th March, 2009 seeking further reply, if any, to the petition filed by Ms. M. Ampareen Lyngdoh in her capacity as Parliamentary Secretary to United Democratic Party and time was given to file the reply by or before 4th April, 2009.

8. Shri Ismail R. Marak filed his reply on 4th April, 2009 pursuant to the notice dated March 28, 2009. In his reply, he asserted that he is still an Independent Member of Meghalaya Legislative Assembly. He also stated in his reply that he has never been an associate member of U.D.P. He stated in his reply that he rendered support to M.P.A. Shri Ismail R. Marak further stated that on account of public opinion in his Constituency, he wrote the letter dated 16th October, 2008 stating that he would like to become associate member of U.D.P and at the same time, he shall be retaining his status as Independent Member of the House. He denied his relationship with Shri Hemanta Biswas Sarma. He also stated that he became Parliamentary Secretary in June, 2008 itself. Shri Ismail R. Marak further stated that M.P.A. is not a Parliamentary party. He also requested for procedure to be followed in terms of Rule 7(7) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988. He further stated that only after evidence of the petitioner, he should be given opportunity to present his witnesses. He further desired that he should be heard in person and also to be represented by a legal counsel.

9. As requested by Shri Ismail R. Marak, I gave a hearing to the counsel of Shri. Ismail R. Marak on 6th April, 2009 which was duly attended by Shri Ismail R. Marak, MLA.

10. Learned Counsel of Shri Ismail R. Marak, MLA simply submitted that Ms. M. Ampareen Lyngdoh already resigned from the membership of the House after filing of the petition and therefore she is not competent to pursue. He further submitted that Shri Ismail R. Marak had never given up his Independent character. Learned counsel further submitted that a copy of Shillong Times is not enclosed. It is relevant to note here that the learned counsel also did not advance any arguments on the letters/applications written by Shri Ismail R. Marak. Learned counsel also emphasized on Rule 6 and 7 of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 and sought the reference of the petition to the committee.

11. Before, I discuss the merit of the case I would like to dispose of the preliminary objections raised by Shri Ismail R. Marak. The preliminary objections raised by Shri Ismail R. Marak can be broadly summarized as under :

- (a) The petition should be referred to a committee under Rule 6 and 7 of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988;
- (b) Ms. M. Ampareen Lyngdoh has resigned from the membership of Meghalaya Legislative Assembly of the House and therefore the complaint is not maintainable;
- (c) Shri Ismail R. Marak should get the opportunity to examine and cross-examine the petitioner and her witnesses.

12. Let me first deal with the first preliminary objection. The submission of the learned counsel of Shri Ismail R. Marak, MLA is to refer the petition to the committee of the legislative assembly to rule 7(7) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988, is devoid of merit and the same is liable to be rejected. Rule 4(4) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 empowers the Speaker to either proceed to determine the question himself or he may refer the same to the committee. For ready reference Rule 4(4) of the disqualification rule is cited hereinunder

*“After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.”*

The Rule as well as the constitutional provisions clearly empowers speaker only to take decision on the petition under Tenth Schedule of the Constitution of India. I do not find merit in the submission of the counsel of Shri Ismail R. Marak for the reason that the provisions contained in the Tenth Schedule of Constitution of India as well as Rule 4(4) provide that a Speaker only can decide the petition. It is not mandatory for the Speaker to refer to all petitions under Tenth Schedule of the Constitution of India to the committee for opinion. The discretion is vested in the speaker. The counsel of Shri Ismail R. Marak did not point out towards the special circumstances warranting the reference of the petition to the committee. I do not find any ground for referring the matter to the committee. Hence, this preliminary objection is, hence, rejected.

13. The Second preliminary objection is with regard to non maintainability of the petition has been raised for the first time on April 6, 2009. So far as resignation of Ms. M. Ampareen Lyngdoh, MLA from membership of Meghalaya Legislative Assembly is concerned, the same would have no effect on the pending petition before me. The petition has been filed by her on behalf of U.D.P. Besides the facts stated in the petition of Ms. M. Ampareen Lyngdoh has not been controverted as such by Shri Ismail R. Marak. Furthermore, the issue as required to be decided by me in the instant petition is as to whether Shri Ismail R. Marak has lost his character as Independent MLA or not. In addition to above, there is no application from the petitioner seeking to withdraw the instant petition. Therefore, this objection of Shri Ismail R. Marak has no force. There is no provision in the Tenth Schedule of the Constitution permitting withdrawal of application.

14. Third and the most important issue is the issue relating to principles of natural justice. Shri Ismail R Marak in his reply sought to examine and cross-examine the petitioner and the witnesses in support of the petition.

I am of the considered opinion that in the instant case after going through the petition and reply submitted by Mr. Ismail R Marak, there is hardly any scope for examination and cross-examination of witnesses to prove a fact. Shri Ismail R. Marak has not denied the authorship of letters/application written by him on 16th October, 2008 to me and also to the party President of U.D.P. He admitted in categorical and unequivocal terms in the said letter that he wants to become the associate member of U.D.P. Ismail R. Marak has also not denied the factum of his joining U.D.P. as associate member and he simply made a futile attempt to explain his status as associate member by stating that even after becoming the associate member of U.D.P., he has maintained his status as Independent MLA. In view of the fact that there is no denial of writing of the letter by Mr. Ismail R. Marak, there is hardly any requirement to lead further evidence on the issue in question. Therefore, in the facts and circumstances of the case, I do not find any object or purpose of examination or cross-examination of the witnesses. I am fortified in my above opinion on the basis of observations made by Supreme Court in the case of Jagjit Singh v. State of Haryana (2006) 11 SCC 1. In Paragraph 14 of the said judgement, the Hon'ble Supreme Court has held the

proceeding under Tenth Schedule are not comparable to either a trial in a Court of Law or Departmental Proceedings for disciplinary action against an employee. Hence, there is no scope of examination or cross-examination of witnesses in view of the facts admitted by the parties.

15. After having decided the preliminary objections, I now propose to decide the petition on merit. The only question which falls for my determination in this petition is as to whether Shri Ismail R. Marak even after becoming an associate member of U.D.P. can claim to be independent member of Meghalaya Legislative Assembly.

16. Before, I deal with the submissions on merit on the above issue, let me first deal with the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule.

The Constitution Bench of the Hon'ble Supreme Court in the judgement of *Kihoto Hollohan v. Zachillhu* 1992 Supp(2) SCC 651 has aptly dealt with the menace of defection in Paragraph 49 of its judgement and the same is quoted hereinunder.

*"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct -whose awkward erosion and grotesque manifestations have been the bane of the times - above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end... "are constitutional [Katzenbach v. Morgan, 384 US 641 : 16 L Ed 2d 828 (1966)]."*

The Hon'ble Supreme Court has rightly observed in the above said celebrated judgement that unprincipled defection is a political and social evil. The state of Meghalaya is victim of unprincipled defection. The government of the day has been victim of unprincipled defection and it is causing almost collapse of the democratic system in the state of Meghalaya. People of Meghalaya have been fed-up with the approach of some of the MLAs who have been committing defection for money and other extraneous considerations.

The petitioner has sought the disqualification of Mr. Ismail R Marak, MLA on the ground that he has violated para 2(2) of Tenth Schedule read with Article 191(2) of the Constitution of India, It would be useful to cite the provisions contained in the Constitution and they are as under:

" 191-Disqualifications for membership. - (1) ...

[(2) A person shall be disqualified for being a member of

the Legislative Assembly or Legislative Council of a state

if he is so disqualified under the Tenth Schedule.]

#### **"TENTH SCHEDULE**

(2) Disqualification on ground of defection

(1).....

(2) An elected member of a house who has been elected as such otherwise then as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election."

A perusal of the Constitutional provision shows that an independent M.L.A. can be disqualified if he joins any political party after such election.

The legal issue which arises for my consideration as to how the word "Join" mentioned in Tenth Schedule has to be interpreted. Whether a formal joining of a political party by independent M.L.A. would disqualify him under Para 2(2) of Tenth Schedule or even in absence of formal joining of the political party but on the basis of conduct a conclusion can be drawn that independent M.L.A. has joined a political party for all practical purposes and intent and would that be sufficient to hold that he has incurred disqualification under Para 2(2) of Tenth Schedule.

The Hon'ble Supreme Court has occasion to interpret the word "Join" in the judgement of Jagjit Singh vs. State of Haryana and others (2006) 11 SCC 1. In the said case, disqualification of independent M.L.A. was sought on the ground that after the election, the independent M.L.A. has joined a political party. The petitioner therein in his petition for disqualification relied upon the interview given by the independent M.L.A. stating that he had joined the political party. The said independent M.L.A. denied that he joined the political party, it was also stated that newspapers have not reported correct facts, it was also stated by him that he has not filed the requisite form and paid the subscription to become the members of the political party. It was also stated by him that he has simply decided to withdraw the support from the ruling party by joining hands with the Congress. The Hon'ble Speaker of the Haryana State Assembly disqualified him on the ground contained in Para 2(2) of Tenth Schedule. The judgement of the Hon'ble Speaker came under challenge before the Hon'ble Supreme Court in the above said case. The Hon'ble Supreme Court dismissed the petition of the independent M.L.A. and laid down the law contained in Para 51 and 52 of the said judgement and the same is cited herein for ready reference.

*"51. As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a member, without a member formally joining a political party in as much as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent member has joined a political party. These are two extreme views on the issue.*

*52. We are of the view that to determine whether an independent member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non-fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined, for all intent and purposes, a political party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of the material on record."*

Thus the test for deciding as to whether independent M.L.A. has incurred disqualification under Para 2(2) of Tenth Schedule is to examine as to whether the Independent M.L.A. has given up his independent character on which he was elected by the electorate.

17. The plea of Shri Ismail R. Marak that he has retained his Independent character even after becoming associate member of U.D.P. is a camouflage to avoid disqualification under Para 2(2) of Tenth Schedule of the Constitution and the law has been settled by the Hon'ble Supreme Court in Jagjit Singh (Supra). In the said judgement, the Hon'ble Supreme Court has held that to determine whether an Independent Member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The Hon'ble Supreme Court has further held in the said judgement that the test is whether he has given up his independent character on which he was elected by the electorate. In light of the law laid down by the Hon'ble Supreme Court in the above judgement, I have no hesitation in holding that Shri Ismail R. Marak has given up his independent character and joined U.D.P.



for all intent and purposes by becoming its associate member. Mere assertion in his application dated 16th October, 2009 that he is maintaining his independent status as M.L.A. is of no consequence and the said assertion in his application dated 16th October, 2008 is for the purposes of avoiding disqualification provided in Para 2(2) of Tenth Schedule only. It is the admission of Shri Ismail R. Marak in his reply dated 04th April, 2009 that on account of opinion of his electorates of the constituency, he joined U.D.P. as associate member and became Parliamentary Secretary in the Govt. of Meghalaya. In view of the categorical admission of Shri Ismail R. Marak in his reply dated April 4, 2009 and his own letters dated 16th October, 2008, it clearly establishes that he has lost his independent character and therefore, in my opinion, he has incurred disqualification under paragraph 2 (2) of Tenth Schedule of the Constitution.

In view of the discussion made herein above and in exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the rules made thereunder, I, Bindo M. Lanong, hereby declare that Shri Ismail R. Marak, member of Meghalaya Legislative Assembly has incurred disqualification for being a member of the Meghalaya Legislative Assembly in terms of Para 2(2) of the said Schedule. Accordingly, Shri Ismail R. Marak, M.L.A has ceased to be a member of the Meghalaya Legislative Assembly with immediate effect and his seat shall thereupon fall vacant. I direct this Order to be published in the Official Gazette and the copies of the Order be forwarded to the Secretary to the Election Commission of India and the Government of Meghalaya.

**BINDO M. LANONG,**  
Speaker,  
Meghalaya Legislative Assembly.

**W. M. RYMBAI,**  
Secretary,  
Meghalaya Legislative Assembly.

**ORDER**

The 8th April, 2009.

**No.SP.8/MLA/2009/25.**

1. By this order, I shall finally decide the petition. The Petition under Tenth Schedule was filed on March 10, 2009 seeking disqualification of Mr. Limison D. Sangma from the Meghalaya Legislative Assembly. The complaint was lodged by Mr. Conrad K. Sangma, M.L.A. of Nationalist Congress Party (hereinafter referred to as "NCP.") and who is also Secretary of Meghalaya Progressive Alliance. The notice was issued to Mr. Limison D. Sangma on the said complaint on 12<sup>th</sup> March, 2009. Mr. Limison D. Sangma filed the reply on 14<sup>th</sup> March, 2009 for the said petition.
2. One more petition dated 16<sup>th</sup> March, 2009 under Rule 6 of Meghalaya Legislative Assembly (Disqualification on the ground of defection) Rules 1998 seeking disqualification of Mr. Limison D. Sangma under paragraph 2(2) of Tenth Schedule read with Article 191 (2) of the Constitution of India was filed by Mr. Timothy D. Shira, M.L.A. of N.C.P. who was also Deputy Chief Minister in the Government of Meghalaya Progressive Alliance.
3. The summary of allegations made in the petition of Mr. Conrad K. Sangma is that Mr. Limison D. Sangma had joined Meghalaya Progressive Alliance and was inducted as Parliamentary Secretary in the Government on 4<sup>th</sup> March, 2009 and within a span of 4 (four) days i.e. on 9<sup>th</sup> March, 2009, he withdrew his support to M.P.A. Government. The sum and substance of the petition is that Mr. Limison D. Sangma by becoming Parliamentary Secretary of M.P.A. Government has lost his character as independent M.L.A. and therefore, he has incurred disqualification under para 2(2) of Tenth Schedule of the Constitution.
4. Mr. Limison D. Sangma in his reply dated 14<sup>th</sup> March, 2009 to the said petition has taken the objection that under the Defection Rules he is entitled to get notice of a minimum period of 7 (seven) days for giving the reply to the petition under Tenth Schedule and has sought time to file reply till 19<sup>th</sup> March, 2009. He has also stated in his reply that the petition of Mr. Conrad K. Sangma is not in accordance with the provisions of Meghalaya Legislative Assembly (Disqualification on ground of defection) Rules 1988 (hereinafter referred to Defection Rule). He has also said that the allegations made in the petition of Mr. Conrad K. Sangma even taken to be true in its entirety do not make out a *prima facie* case under Tenth Schedule of the Constitution. It is, however, relevant to state here that Mr. Limison D. Sangma in his reply has not denied joining of M.P.A Government on 4<sup>th</sup> March, 2009 as Parliamentary Secretary.
5. Mr. Timothy D. Shira, MLA in his petition has stated that Mr. Limison D. Sangma has joined NCP for all practical purposes and therefore he has given up his Independent character on the basis of which he was elected from 45-Tirikilla Assembly constituency. Mr. Timothy D. Shira in his petition has also stated that Mr. Limison D. Sangma approached him on 20<sup>th</sup> February, 2009 and came to his residence and expressed his desire to join N.C.P. and also expressed his desire to be a part of Government of Meghalaya formed by MPA. It was also stated by Mr. Limison D. Sangma to Mr. Timothy D. Shira that he will become associate member of N.C.P. as Mr. Ismail R. Marak has become the associate member of U.D.P. It was also stated in the petition that on the assurances of Mr. Limison D. Sangma the N.C.P. nominated him for Parliamentary Secretary in the M.P.A. Government. A dinner party was also thrown by N.C.P. for Mr. Limison D. Sangma on 7<sup>th</sup> March, 2009 for him becoming the Parliamentary Secretary as well as informal member of N.C.P. Mr. Timothy D. Shira has also stated that Mr. Limison D. Sangma has been discussing the political strategies of N.C.P. party in the coming Lok Sabha election in the state of Meghalaya. Mr. Timothy D. Shira has also annexed original copies of the bill paid by N.C.P. party on 8<sup>th</sup> March, 2009 to Eldorado Guest House where the party was given for welcoming Mr. Limison D. Sangma.
6. A detailed interim order was passed by me on 16<sup>th</sup> March, 2009 on the petition whereby on the basis of material on record, the membership and voting right of Mr. Limison D. Sangma was suspended pending final hearing. However, Mr. Limison D. Sangma did not submit further reply till 19<sup>th</sup> March, 2009.
7. A fresh notice was issued to Mr. Limison D. Sangma on 28<sup>th</sup> March, 2009 seeking further reply, if any, to the petition filed by Messrs Conrad K. Sangma and Timothy D. Shira and time was given to Mr. Limison D. Sangma to file the reply by or before 4<sup>th</sup> April, 2009.

8. Shri Limison D. Sangma filed his reply on 4<sup>th</sup> April, 2009 pursuant to the notice dated March 28<sup>th</sup>, 2009. In his reply, he asserted that he is still an Independent Member of Meghalaya Legislative Assembly.

Mr. Limison D. Sangma in his reply has also made, false allegation against me that I have predetermined mindset to pass order against him.

I say that the said allegation is baseless and is without substance. Mr. Limison D. Sangma has referred to some newspaper report in reply whose name have not been mentioned in the reply in which I have allegedly said that Mr. Limison D. Sangma shall be disqualified and he has also stated in the reply that he will produce those public statement at the time of hearing. I say that these false, frivolous allegations have been made to intimidate me from discharging by duties conferred on me by the Constitution. I disapprove the conduct of Mr. Limison D. Sangma. I may add here that during hearing, his counsel did not produce any of my so called public statements allegedly made against him.

9. Further, in reply to the petition of Conrad K. Sangma, Mr. Limison D Sangma has stated that even though he became Parliamentary Secretary in Meghalaya Progressive Government, it does not indicate that he has joined a political party.

In reply to the petition of Timothy D Shira, he says that the said complaint is belated complaint and has been filed much after the order of Hon'ble Gauhati High Court on 17<sup>th</sup> March, 2009. The allegation of Mr. Limison D. Sangma is false and baseless. Mr. Limison D. Sangma has not bothered to read my interim order dated 16<sup>th</sup> March, 2009. My interim order dated 16<sup>th</sup> March, 2009 refers to the petition of Mr. Timothy D. Shira and the details of allegation made in the petition of Mr. Timothy D. Shira are also mentioned in my order dated 16<sup>th</sup> March, 2009. It was categorically stated in my order dated 16<sup>th</sup> March, 2009 that a copy of the petition of Mr. Timothy D. Shira could not be served on Mr. Limison D. Sangma.

On merit, Mr. Limison D. Sangma denied the allegations. He denied that he joined the N.C.P. as associate member. Mr. Limison D. Sangma denied hosting of the party by N.C.P. on 7<sup>th</sup> March, 2009. He admitted his meeting with various political leaders but he said that it does not amount to joining a political party. He demanded the cross-examination of Timothy D. Shira. He annexed the photocopy of the invitation card issued by him and Mr. Ismail R. Marak for dinner party hosted by them on March 7<sup>th</sup>, 2009. However, Mr. Limison D. Sangma did not enclose the receipt of payment made by him or Mr. Ismail R. Marak for the said dinner party nor did he refute the statement of Mr. Timothy D. Shira regarding payment of the dinner party by N.C.P. hosted allegedly by them. He further asserted that he has withdrawn support from M.P.A. Government on account of policy difference. He further desired that he should be heard in person and also to be represented by a legal counsel.

10. As requested by Mr. Limison D. Sangma, I gave a hearing to the counsel of Mr. Limison D. Sangma on 6<sup>th</sup> April, 2009 which was also attended by Mr. Limison D. Sangma, MLA.
11. Learned Counsel of Mr. Limison D. Sangma, MLA emphasized on Rule 6 & 7 of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 and sought the reference of the petition to the Committee and demanded cross examination of the petitioners.
12. Let me first deal with the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule. The Constitution Bench of the Hon'ble Supreme Court in the judgement of Kihoto Hollohan v. Zachillhu 1992 Supp(2) SCC 651 has aptly dealt with the menace of defection in paragraph 49 of its judgement and the same is quoted hereinunder.

*"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual*

*freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct whose awkward erosion and grotesque manifestations have been the bane of the times - above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end..." "are constitutional [Katzenbach v. Morgan, 384 US 641 : 16L Ed 2d 828 (1966)]."*

The Hon'ble Supreme Court has rightly observed in the above said celebrated judgement that unprincipled defection is a political and social evil. The state of Meghalaya is victim of unprincipled defection. The Government of the day has been victim of unprincipled defection and it is causing almost collapse of the democratic system in the state of Meghalaya. People of Meghalaya have been fed-up with the approach of some of the MLAs who have been committing defection for money and other extraneous considerations.

13. The petitioner has sought the disqualification of Mr. Limison D. Sangma , MLA on the ground that he has violated para 2(2) of Tenth Schedule read with Article 191(2) of the Constitution of India, It would be useful to cite the provisions contained in the Constitution and they are as under:

" 191-Disqualifications for membership. - (1) ...

[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a state if he is so disqualified under the Tenth Schedule.]

#### **"TENTH SCHEDULE**

(2) Disqualification on ground of defection

(1) .....

(2) An elected member of a house who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election."

A perusal of the Constitutional provision show that an independent M.L.A. can be disqualified if he joins any political party after such election.

14. The legal issue which arises for my consideration in this case as to how the word "Join" mentioned in Tenth Schedule has to be interpreted. Whether a formal joining of a political party by independent M.L.A. would disqualify him under para 2(2) of Tenth Schedule or even in absence of formal joining of the political party but on the basis of conduct a conclusion can be drawn that independent M.L.A. has joined a political party for all practical purposes and intent and would that be sufficient to hold that he has incurred disqualification under para 2(2) of Tenth Schedule.

The Hon'ble Supreme Court has occasion to interpret the word "Join" in the judgement of Jagjit Singh vs. State of Haryana and others (2006) 11 SCC 1. In the said case, disqualification of independent M.L.A. was sought on the ground that after the election, the independent M.L.A. has joined a political party. The petitioner therein in his petition for disqualification relied upon the interview given by the independent M.L.A. stating that he had joined a political party. The said independent M.L.A. denied that he joined the political party, it was also stated that newspapers have not reported correct facts, it was also stated by him that he has not filed the requisite form and paid the subscription to become the members of the political party. It was also stated by him that he has simply decided to withdraw the support from the ruling party by joining hands with the Congress. The Hon'ble Speaker of the Haryana State Assembly disqualified him on the ground contained in Para 2(2) of Tenth Schedule. The judgement of the Hon'ble Speaker came under challenge before the Hon'ble Supreme Court in the above said case. The Hon'ble Supreme Court dismissed the petition of the independent M.L.A. and laid down the law contained in para 51 and 52 of the said judgement and the same is cited herein for ready reference.

*"51. As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a member, without a member formally joining a political party inasmuch as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent member has joined a political party. These are two extreme views on the issue.*

*52. We are of the view that to determine whether an independent member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non-fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined, for all intent and purposes, a political party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of the material on record." Thus, the test for deciding as to whether independent M.L.A. has incurred disqualification under para 2(2) of Tenth Schedule is to examine as to whether the Independent M.L.A. given up his independent character on which he was elected by the electorate.*

15. Before, I deal the petition on merit, I would like to dispose of the preliminary objections raised by Mr. Limison D. Sangma. Preliminary objections raised by Mr. Limison D. Sangma can be broadly summarized as under:
  - (a) The petition should be referred to a committee under -Rule 6 & 7 of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988;
  - (b) He should get the opportunity to examine and cross-examine the petitioners and their witnesses.
16. Let me first deal with the first preliminary objection. The submission of the learned Counsel of Mr. Limison D. Sangma to refer the petition to the committee of the legislative assembly under Rule 7(7) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988, is devoid of merit and the same is liable to be rejected. Rule 4(4) of the members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 empowers the Speaker to either proceed to determine the question himself or he may seek the report from the committee. For ready reference Rule 4(4) of the disqualification rule is cited hereinunder

*"After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed {whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him."*

The Rule as well as the constitutional provisions clearly empowers speaker only to take decision on the petition under Tenth Schedule of the Constitution of India. I do not find merit in the submission of the counsel of Mr. Limison D. Sangma for the reason that the provisions contained in the Tenth Schedule of Constitution of India as well as Rule 4(4) provide that a Speaker can decide the petition on his own. It is not mandatory for the Speaker to refer to all petitions under Tenth Schedule of the Constitution of India to the committee for opinion. The discretion is vested in the speaker. The counsel of Mr. Limison D. Sangma did not point out any special circumstances warranting the reference of the petition to the committee. I do not find any ground for referring the matter to the committee. Hence, this preliminary objection is rejected.

17. Second issue and the most important issue is the issue relating to principles of natural justice. The submission of the counsel that examination of the petitioner and cross examination is a must for compliance to the principles of natural justice, I have to say that the learned Counsel of Mr. Limison D. Sangma has cast the principles of natural justice into a rigid mould and legal straightjacket. The said approach is not a correct approach.



18. The issue of examination of the petitioner or any other witness would arise only when the petition cannot be decided one way or the other on the basis of submissions made by the parties on legal issues and facts admitted by the parties.
19. In the facts and circumstances, I do not feel the necessity of having examination or cross examination of the petitioner/Mr. Limison D. Sangma. I am of the considered opinion that in the instant case after going through the petition and reply submitted by Mr. Limison D. Sangma and also having regard to over all view of the matter, there is hardly any scope for examination and cross-examination of witnesses to prove a fact. I do not find any object or purpose of examination or cross-examination of the witnesses. I am fortified in my above opinion on the basis of observations made by Supreme Court in the case of Jagjit Singh v. State of Haryana (2006) 11 SCC 1. In paragraph 14 of the said judgement, the Hon'ble Supreme Court has held the proceeding under Tenth Schedule are not comparable to either a trial in a Court of Law or Departmental Proceedings for disciplinary action against an employee.
20. Now let me examine the response of Mr. Limison D. Sangma to the petition filed under Tenth Schedule. Mr. Limison D. Sangma has admitted the fact of joining of M.P.A. Government as a Parliamentary Secretary but he has denied the allegation that he has joined the N.C.P.
21. The stand of Mr. Limison D. Sangma that he did not join N.C.P. party does not look credible to me for the reason that Mr. Limison D. Sangma has become part of the Government to which the NCP was one of the constituents. It is not his case that he extended the support to M.P.A. Government from outside. The Hon'ble Supreme Court in Jagjit Singh case (supra) has held that a mere expression of outside support would not lead to an implication of a member joining a political party. In the instant case, Mr. Limison D. Sangma became integral part of the Government. Therefore, the inference can be drawn that he became the part of the government by informally joining NCP and inference can be drawn that only on the basis of recommendation of NCP, he was made Parliamentary Secretary in the Government There is no other factor or reason for making him the Parliamentary Secretary to the Government except for the fact that he informally joined the NCP party. Mr. Limison D. Sangma obviously could not have formally joined the party to avoid disqualification under paragraph 2 (2) of Tenth Schedule. The veil of secrecy has to be lifted to see that an independent member has informally joined a political party or not. In this case, the facts and circumstances do indicate the joining of NCP by Mr. Limison.
22. It has been admitted by Mr. Ismail R. Marak and Limison D. Sangma that they have jointly hosted the party on March 7, 2009. It has been the case of Mr. Limison D. Sangma that the said party was not hosted by NCP. Mr. Limison D. Sangma except for placing the invitation card has not placed any other material including receipt of the payment allegedly made by him or Ismail R. Marak to the Guest House for the said party. I have no hesitation in drawing the inference that the joint party hosted by Mr. Limison D. Sangma with Ismail R. Marak who has admitted his joining of U.D.P. party as associate member do indicate that Mr. Limison D. Sangma was also in same position as that of Mr. Ismail R. Marak. That is to say, Mr. Limison D. Sangma has joined the N.C.P. Party for all intent and purpose and for the said purpose, party was hosted by both of them only. It is important to remember here that the materials on the basis of which conclusion can be drawn that an independent member has informally joined a political party will always be secret and discreet one for the obvious reason of inviting disqualification under paragraph 2 (2) of Tenth Schedule.

The inference can be drawn on the basis of attended circumstances. Even the other allegations of Mr. Timothy D. Shira against Mr. Limison D. Sangma in absence of cross examination that Mr. Limison approached him for joining of the N.C.P. party are not accepted, the inference can be drawn that Mr. Limison D. Sangma has for all practical purpose and intent joined the political party. There are enough circumstances like in the nature of taking oath as Parliamentary Secretary and meeting of the leaders of NCP (which is not denied by him in his reply), hosting a joint party after he became the Parliamentary Secretary in the Government do indicate that Mr. Limison D. Sangma has informally joined the N.C.P. political party for all intent and purpose and lost his independent character and therefore he incurred disqualification from the membership of Meghalaya Legislative Assembly under paragraph 2 (2) of Tenth Schedule.

23. Last but not the least, I must make some observation on the conduct of Mr. Limison D. Sangma and situation prevailing in the State of Meghalaya which may not be relevant for deciding the issue herein. But I must express my unhappiness in the manner in which Mr. Limison D. Sangma and similarly situated persons have made the mockery of democratic system in small states like Meghalaya. Mr. Limison D. Sangma joined the M.P.A. Government on 4<sup>th</sup> March, 2009 and extended support to M.P.A. Government on the same day. The joining of Government and extending support to the Government definitely indicate that he is in conformity with the policies of the Government formed by M.P.A. and only on those principles, he has supported the Government within five days of becoming part of the Government. Mr. Limison D. Sangma resigns from the Government on March 9, 2009 by stating that he is withdrawing the support of the Government. The change of heart of Mr. Limison D. Sangma within five days is obviously not motivated by any ideological differences with the policy of M.P.A. but is based on other unprincipled factors which I do not want to elaborate. I am posing a question to all political parties that whether the elected representative by this kind of conduct should be permitted to give a bad name to the democratic process. Can such elected representatives be allowed to wreck the democratic system ? Political parties should ponder and should make an endeavour to find solution to the menace of unprincipled undemocratic defection perpetuated particularly in small states.
24. On the basis of facts and circumstances of the case, I have no hesitation in holding that Mr. Limison D. Sangma has incurred disqualification under paragraph 2 (2) of Tenth Schedule of the Constitution of India. Over all facts of the case clearly establish that he has lost his independent character and therefore, in my opinion, he has incurred disqualification under paragraph 2 (2) of Tenth Schedule of the Constitution.

In view of the discussion made herein above and in exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the rules made thereunder, I, Bindo M. Lanong, hereby declare that Mr. Limison D. Sangma, member of Meghalaya Legislative Assembly has incurred disqualification for being a member of the Meghalaya Legislative Assembly in terms of Para 2(2) of the said Schedule. Accordingly, Mr. Limison D. Sangma, MLA has ceased to be a member of the Meghalaya Legislative Assembly with immediate effect and his seat shall thereupon fall vacant.

I direct this Order to be published in the Official Gazette and the copies of the Order be forwarded to the Secretary to the Election Commission of India and the Government of Meghalaya.

**BINDO M. LANONG,**  
Speaker,  
Meghalaya Legislative Assembly.

**W. M. RYMBAL,**  
Secretary,  
Meghalaya Legislative Assembly.



Postal Registration No. NE.-771/2006-2008

# The Gazette of Meghalaya

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

No. 92

Shillong, Wednesday, April 8, 2009,

18th Chaitra 1931 (S.E.)

## PART - I

GOVERNMENT OF MEGHALAYA  
URBAN AFFAIRS DEPARTMENT  
ORDERS BY THE GOVERNOR

### NOTIFICATION

The 8th April, 2009.

**No.UAM.54/2009/2.**—In order to make the Municipal Boards to function in an effective manner, the Governor of Meghalaya is pleased to appoint Chairmen of the various Municipal Boards as under with immediate effect and until further orders.

#### Chairmen

- |                                 |   |  |
|---------------------------------|---|--|
| 1. Jowai Municipal Board        | - | Deputy Commissioner, Jaintia Hills, Jowai.             |
| 2. Tura Municipal Board         | - | Deputy Commissioner, West Garo Hills, Tura.            |
| 3. Williamnagar Municipal Board | - | Deputy Commissioner, East Garo Hills, Williamnagar.    |
| 4. Baghmara Municipal Board     | - | Deputy Commissioner, South Garo Hills, Baghmara.       |
| 5. Resubelpara Municipal Board  | - | S.D.O. (Civil), Resubelpara Sub-Division, Resubelpara. |

**B. N. SANGMA,**  
Joint Secretary to the Govt. of Meghalaya,  
Urban Affairs Department.